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6

7 **UNITED STATES DISTRICT COURT**
8
FOR THE CENTRAL DISTRICT OF CALIFORNIA
9

10
11 AETHER, LLC, a California Limited
Liability Company

Civil Action No.: 2:16-CV-02751

12 Plaintiff,

COMPLAINT

13 - against -
14

Jury Trial Demanded

15
16 SARA MOTE, an individual, and THE
MOTE AGENCY, an unregistered
17 fictitious business name owned and
controlled by Sara Mote,
18

19 Defendants.

20
21 Plaintiff, Aether, LLC (“Aether”), by its attorneys, Weintraub Tobin Chediak
22 Coleman Grodin, a Law Corporation, as and for its Complaint against Defendants, Sara
23 Mote and The Mote Agency, alleges as follows:

24 **NATURE OF ACTION**

25 1. This is an action in law and in equity for trademark infringement, false
26 designation of origin, and unfair competition arising under the Lanham Act, 15 U.S.C.
27 §§ 1051 *et seq.*, for violations of the Anticybersquatting Consumer Protection Act, 15
28 U.S.C. § 1125(d), and for related claims of trademark infringement, unfair competition,

1 dilution, injury to business reputation and deceptive trade practices under the laws of the
2 State of California.

3 **PARTIES**

4 2. Plaintiff Aether, LLC is a California limited liability company with its
5 principal place of business at 6100 Melrose Avenue, California.

6 3. Upon information and belief, Defendant Sara Mote (“Mote”) is a California
7 resident, with a principal place of business at 311 Market Street, Venice, California.

8 4. Upon information and belief, Defendant The Mote Agency, is an
9 unregistered fictitious business name owned and controlled by Defendant Sara Mote, with
10 its principal place of business at 311 Market Street, Venice, California.

11 **JURISDICTION & VENUE**

12 5. The Court has jurisdiction over the subject matter of this action under
13 Section 39 of the Lanham Act, 15 U.S.C. § 1121, and under 28 U.S.C. §§ 1331, 1332, and
14 1338(a) and (b). The Court has supplemental jurisdiction over the state law claims under
15 28 U.S.C. §§ 1338(b) and 1367(a).

16 6. The Court has personal jurisdiction over Defendants by virtue of the fact
17 that, upon information and belief, (a) Defendant Sara Mote resides in the State of
18 California; (b) Defendants are doing business in the State; (c) have transacted business
19 within the State of California; (d) have infringed Plaintiff’s trademarks within the State
20 and (e) have infringed Plaintiff’s trademarks without the State causing injury to Plaintiff’s
21 property within the State.

22 7. Venue is proper under 28 U.S.C. §§ 1391(b) and (c) because Defendant Sara
23 Mote resides in the Central District of California and Defendants do business in, have
24 substantial contacts with and/or may be found in the Central District of California, and a
25 substantial portion of the events at issue have arisen and will arise in this judicial district.
26 Furthermore, Defendants, upon information and belief, regularly conduct business in the
27 State of California through their commerce-related interactive Web Sites located on the
28 World Wide Web at Aetherbeauty.co and mote.agency.

FACTS COMMON TO ALL COUNTS

8. Plaintiff Aether, LLC is a leading clothing company.

3 9. Aether is the owner of numerous U.S. Trademark Registrations for the
4 AETHER trademark. The first AETHER trademark registration dates back to 2010. For
5 purposes of this action, Aether owns three federal Trademark Registrations covering
6 apparel, as follows:

7 (a) U.S. Trademark Registration No. 3723747 for the trademark AETHER for
8 Ski jackets; Parkas; Jackets; Sweat shirts; T-shirts; Polo shirts; Shirts; Rain jackets
9 in Int'l Class 25 on the Principal Register. (A copy of the trademark registration
10 certificate is attached hereto at Exhibit "A"). Said registration issued in 2009 and
11 has become incontestable.

12 (b) U.S. Trademark Registration No. 3819754 for the trademark AETHER for
13 shorts and swimwear in Int'l Class 25 on the Principal Register. (A copy of the
14 trademark registration certificate is attached hereto at Exhibit "B"). Said registration
15 issued in 2010 and has become uncontested.

16 (c) U.S. Trademark Registration No. 4190890 for the trademark AETHER for
17 Ski pants; Ski trousers; Ski wear; Pants; Snowboard pants in Int'l Class 25 on the
18 Principal Register. (A copy of the trademark registration certificate is attached
19 hereto at Exhibit "C"). Said registration issued in 2012.

20 | These trademarks are hereinafter referred to collectively as the “Aether Trademarks.”

21 10. The Aether Trademarks are inherently distinctive to the public and the trade
22 with respect to clothing. The Aether Trademarks serve primarily as designators of origin of
23 products and services emanating from or sponsored by Plaintiff.

24 11. A strong association exists between Plaintiff's AETHER Trademarks and
25 clothing. Aether has deliberately and consistently reinforced such association as follows:

26 (a) Since 2009, Plaintiff has spent substantial amounts of money on national advertising
27 campaigns using the AETHER Trademarks; and (b) The AETHER Trademarks are
28 prominently featured on all of Plaintiff's clothing and on its stores and website.

1 12. Since the inception of their use, the Aether Trademarks have been used by Plaintiff
2 only in connection with the finest clothing. The quality of Plaintiff's clothing has been
3 recognized as follows:

4 (a) An article entitled "Urban wilds or great outdoors, Aether aims to be out and
5 about" by Booth Moore appeared in the Los Angeles Times on December 14, 2015
6 (A copy of the article is attached hereto at Exhibit "D");
7 (b) An article entitled "A High Five and a Handshake for Aether and Icebreaker"
8 written by Jon Caraminca appeared in The New York Times on November 13, 2013
9 (A copy of the article is attached hereto at Exhibit "E");
10 (c) An article entitled "Your Parka Makes You Look Like the Michelin Man:
11 Here's How to Upgrade It" written by Alessandra Codinha appeared in Vogue on
12 January 13, 2015 (A copy of the article is attached hereto at Exhibit "F");
13 (d) An article entitled "In the Field with Aether Apparel" written by Hans Aschim
14 appeared in Cool Hunting on January 7, 2015 (A copy of the article is attached
15 hereto at Exhibit "G");
16 (e) An article entitled "Aether is the New Black" written by Armin appeared on
17 Brand New on July 20, 2009 (A copy of the article is attached hereto at Exhibit
18 "H");
19 (f) An article entitled "Above the Clouds" written by Benjamin Clymer appeared in
20 Life and Times on April 5, 2011 (A copy of the article is attached hereto at Exhibit
21 "I");
22 (g) Aether has also appeared in many other articles and is well known for its
23 clothing and apparel. Aether clothing also carries a lifetime guarantee.

24 13. In addition, Aether has made extensive use of the Aether Trademarks in
25 connection with the Internet since 2008. Plaintiff uses its Aether Trademarks on its
26 Internet web site at www.aetherapparel.com and Plaintiff has owned the domain name
27 "aetherapparel.com" since 2008. (A true and correct printout from GoDaddy.com
28 demonstrating Plaintiff's ownership of "aetherapparel.com" is attached hereto as Exhibit

“J” and incorporated herein by reference.)

14. Aether also owns and operates four retail stores which are located in New York, Los Angeles, San Francisco and Aspen.

15. Aether has also collaborated with the premium eyewear company SALT to create sunglasses and has appeared in many articles regarding this collaboration. (True and correct printouts are attached hereto as Exhibit "K" and incorporated herein by reference.)

8 16. As a result of the widespread promotion, marketing, advertising, use and
9 display of the Aether Trademarks over the past seven years, (a) the public and the trade
10 have come to recognize that the marks refer to high quality clothing emanating from a
11 single source of origin, and (b) said marks have gained secondary meaning and extensive
12 goodwill.

Defendants' Acts of Infringement, False Designation of Origin, Unfair Competition, Dilution, Injury to Business Reputation and Deceptive Trade Practices

16 17. In or about January 20, 2016, Plaintiff became aware that Defendants
17 intended to adopt and commence use of the name “Aether” in connection with an Aether
18 name on aetherbeauty.com in the same basic industry as clothing and fashion.

18. Defendants' "Aether" name is identical to Plaintiff's "Aether" trademark and
is confusingly similar to Plaintiff's registered Aether Trademarks.

19. The parties' products are sold in the same channels of trade to the same class
of purchasers.

23 20. Upon information and belief, Defendants maintain an Internet web site at the
24 URL “www.aetherbeauty.co”, at which the designation “Aether” is featured. This web site
25 is accessible to residents of California and this District. (A true and correct print out is
26 attached to this Complaint as Exhibit “L” and incorporated herein by reference.)

27 21. Upon information and belief, Defendant The Mote Agency has registered the
28 URL “mote.agency”, which resolves to its www.aetherbeauty.co” Internet web site. (A

1 true and correct print out is attached to this Complaint as Exhibit "M" and incorporated
2 herein by reference.)

3 22. Defendants' domain names are confusingly similar to Plaintiff's "Aether"
4 trademark and Plaintiff's other registered and unregistered Aether Trademarks.

5 23. Defendants' aforementioned acts are intended to, and are likely to, blur and
6 erode the distinctiveness of the Aether trademark and tarnish the reputation of Plaintiff and
7 its famous Aether mark and its products and services. Many beauty and clothing products
8 are similar and interchangeable products. Fashion brands often expand their product lines
9 into beauty and fragrance lines under the same brand name.

10 24. Defendants' aforementioned acts, have caused, and will continue to cause
11 irreparable harm to Plaintiff and its Aether mark, and to the business and substantial
12 goodwill represented thereby, and said acts and damage will continue unless restrained by
13 this Court.

14 25. As a result of the closeness of the intended use of the marks, on or about
15 February 9, 2016, Plaintiff's counsel sent a cease and desist letter to Defendant Sara Mote,
16 in which Plaintiff demanded, *inter alia*, that Defendant Sara Mote cease all use of the
17 "Aether" mark, or any other mark containing or comprising the term "Aether", take
18 immediate steps to delete the use of the Aether name and logo from any trade listings,
19 advertising, promotional material, websites, and blogs; cease use of the Aetherbeauty.co
20 domain name and surrender and assign all rights and interest in the domain name and its
21 registration to Plaintiff. (A true and correct copy of the Cease and Desist letter is attached
22 to this Complaint as Exhibit "N" and incorporated herein by reference.)

23 26. Despite Defendant Sara Mote's actual knowledge of Plaintiff's prior and
24 superior trademark rights, as well as Plaintiff's clear and unambiguous objections to such
25 infringing activities, upon information and belief, Defendant Sara Mote has continued
26 using the mark AETHER.

27 27. Upon information and belief, at the time Defendants acted as aforesaid, they
28 had knowledge that:

1 (a) Plaintiff owned trademark rights in the Aether Trademarks; and
2 (b) the owner of trademark rights in the Aether Trademarks had not authorized their
3 use on or in connection with Defendants' Aether logo.

4 28. Upon information and belief, even after receiving Plaintiff's cease and desist
5 letters, Defendants have continued to use the designation "Aether" as the name of a Aether
6 logo and in connection with the products under this logo, as alleged more fully above.

7 29. Upon information and belief, Defendants are continuing and intend to
8 continue to use the designation "Aether" as the name of an Aether logo and in connection
9 with the skincare products produced under this logo.

10 30. Upon information and belief, Defendants continue in their course of
11 infringing conduct with full knowledge that:

12 (a) Plaintiff owns trademark rights in the Aether Trademarks;
13 (b) the owner of trademark rights in the Aether Trademarks has not authorized their
14 use on or in connection with Defendants' Aether logo; and
15 (c) Defendants' conduct has or will cause confusion.

16 31. Defendants' aforementioned acts are willful and intentional.

17 **First Cause of Action**

18 **FEDERAL TRADEMARK INFRINGEMENT**

19 32. Plaintiff repeats and realleges each and every allegation of paragraphs 1
20 through 31 as though fully set forth herein.

21 33. Defendant's aforementioned acts constitute willful infringement of Plaintiff's
22 trademark for Aether in violation of the Lanham Act, Section 32(1), 15 U.S.C. § 1114(1).

23 34. By such wrongful acts Defendants have, and unless restrained by the Court,
24 will continue to cause serious irreparable injury and damage to Plaintiff and to the
25 goodwill associated with Plaintiff's Aether mark, including diversion of customers, lost
26 sales and lost profits.

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Second Cause of Action

FALSE DESIGNATION OF ORIGIN

35. Plaintiff repeats and realleges each and every allegation of paragraphs 1
through 31 and 32 through 34 as though fully set forth herein.

36. Defendant's aforementioned acts constitute false designation of origin, false representation and false description in violation of the Lanham Act, Section 43(a), 15 U.S.C. § 1125(a).

8 37. By such wrongful acts, Defendants have, and unless restrained by the Court,
9 will continue to cause serious irreparable injury and damage to Plaintiff and to the
10 goodwill associated with Plaintiff's Aether mark, including diversion of customers, lost
11 sales and lost profits.

12 || 38. Plaintiff has no adequate remedy at law.

Third Cause of Action

TRADEMARK DILUTION

15 39. Plaintiff repeats and realleges each and every allegation contained in
16 paragraphs 1 through 31, 32 through 34 and 35 through 38 as though fully set forth herein.

17 40. Plaintiff's federally registered trademark for Aether is a famous mark and
18 had become famous prior to Defendants' first use of the Internet domain name and mark in
19 conjunction with its tradename and goods and services offered to the public as alleged.

41. Plaintiff's federally registered trademark for Aether is inherently distinctive
21 to the public and the trade with respect to its goods and services.

22 42. By such wrongful acts, defendants have, and unless restrained by the Court,
23 will continue to cause serious irreparable injury and damage to Plaintiff and to the
24 goodwill associated with Plaintiff's famous Aether mark by diluting and blurring its
25 distinctive quality.

26 43. Defendants' aforementioned acts constitute willful dilution of Plaintiff's
27 federally registered trademark for Aether in violation of the Federal Trademark Dilution
28 Act, codified at Section 43(c) of the Lanham Act, 15 U.S.C. § 1125(c).

44. Plaintiff has no adequate remedy at law.

Fourth Cause of Action

CYBERSQUATTING

4 45. Plaintiff repeats and realleges each and every allegation contained in
5 paragraphs 1 through 31, 32 through 34, 35 through 38, and 39 through 44 as though fully
6 set forth herein.

7 46. Upon information and belief, Defendants have a bad faith intent to profit
8 from the registration and use of the Internet domain name Aetherbeauty.co by creating an
9 association with Plaintiff's famous Aether trademark as to source or sponsorship.

10 47. The second-level domain name portion of the Aetherbeauty.co Internet
11 domain name is confusingly similar to, and dilutes the distinctive quality of, Plaintiff's
12 famous Aether trademark.

13 48. Defendants' acts, as aforesaid, are in violation of the Anticybersquatting
14 Consumer Protection Act under Section 43(d) of the Lanham Act, 15 U.S.C. § 1115(d).

Fifth Cause of Action

COMMON LAW UNFAIR COMPETITION

17 49. Plaintiff repeats and realleges each and every allegation contained in
18 paragraphs 1 through 31, 32 through 34, 35 through 38, 39 through 44, and 45 through 48
19 as though fully set forth herein.

20 50. Defendants' aforementioned acts constitute unfair competition under the
21 common law.

22 || 51. Plaintiff has been damaged by Defendants' aforementioned acts.

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Sixth Cause of Action

CALIFORNIA UNFAIR COMPETITION

(Business and Professional Code § 17200)

4 52. Plaintiff repeats and realleges each and every allegation contained in
5 paragraphs 1 through 31, 32 through 34, 35 through 38, 39 through 44, 45 through 48 and
6 49 through 51 as though fully set forth herein.

7 53. Defendants have engaged in unlawful, unfair and/or fraudulent business
8 practices within the meaning of California's Unfair Competition Law, Business and
9 Professions Code section 17200, et seq., by his unauthorized and improper use of the
10 Domains and the Infringing Mark, all to the detriment of Plaintiff.

11 54. Plaintiff asserts this claim for relief as a competitor of Defendants damaged
12 by Defendants' wrongful acts.

13 55. Defendants should be required to restore any and all profits earned as a result
14 of their unlawful and unfair actions.

15 56. Defendants will persist in his unlawful, unfair and/or fraudulent conduct and
16 cause Plaintiff irreparable harm for which there is no adequate legal remedy unless and
17 until enjoined by this Court

18 57. Plaintiff is entitled under California Business and Professions Code § 17203
19 to an injunction restraining Defendants, their officers, agents, and employees, and all
20 persons acting in concert with them, from engaging in any further such acts in violation of
21 California's Unfair Competition Law.

22 58. Plaintiff is further entitled to recover from Defendants the profits wrongfully
23 gained by Defendants in violation of California's Unfair Competition Law.

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Seventh Cause of Action

TRADEMARK DILUTION AND INJURY TO BUSINESS

REPUTATION UNDER CALIFORNIA LAW

(Business and Professions Code § 14202)

59. Plaintiff repeats and realleges each and every allegation contained in paragraphs 1 through 31, 33 through 34, 35 through 38, 39 through 44, 45 through 48, 49 through 51, and 52 through 58 as though fully set forth herein.

8 60. Defendants have injured and will continue to injure Plaintiff's business
9 reputation and create a blurring and tarnishing of Plaintiff's Aether Trademarks where
10 Plaintiff has no control over Defendants. Accordingly, Defendants are diluting and are
11 likely to continue diluting Plaintiff's distinctive Aether Trademarks, as follows:

(a) Defendants' unauthorized use of Plaintiff's Aether Trademarks is diluting and is likely to continue to dilute Plaintiff's valuable and distinctive Aether Trademarks by blurring the distinctiveness thereof and tarnishing Plaintiff's Aether Trademarks. Such unauthorized usage is likely to cause injury to Plaintiff's business reputation and/or dilute the distinctive quality of Plaintiff's Aether Trademarks in violation of California Business and Professions Code § 14202.

(b) Defendants' unauthorized use of Plaintiff's Aether Trademarks on the Internet is diluting and is likely to continue to dilute Plaintiff's valuable and distinctive Aether Trademarks by blurring the distinctiveness thereof and tarnishing Plaintiff's Aether Trademarks. Such unauthorized usage is likely to cause injury to Plaintiff's business reputation and/or dilute the distinctive quality of Plaintiff's Aether Trademarks in violation of California Business and Professions Code § 14202.

25 61. By reason of the foregoing, Plaintiff is being irreparably harmed and will
26 continue to be irreparably harmed unless Defendants are enjoined from using Plaintiff's
27 Aether Trademarks, which use is diluting the distinctive quality of Plaintiff's Aether
28 Trademarks.

1 **WHEREFORE, Plaintiffs pray that the Court enter judgment:**

2 A. Granting a temporary restraining order, preliminary injunction and
3 permanent injunction restraining Defendants, their officers, directors, principals, agents,
4 servants, employees, successors and assigns, and all individuals acting in concert or
5 participation with them, from:

6 (i) directly or indirectly selling, offering for sale, marketing, advertising, promoting
7 or otherwise using the Aether trademark, or any mark that is confusingly similar
8 thereto and is likely to cause consumer confusion, mistake and/or deception with
9 respect to the Aether trademark; and,

10 (ii) doing any other acts that are intended to or will be likely to deceive consumers
11 or the trade into falsely believing that there is an affiliation or relationship between
12 Plaintiffs and Defendants or between Plaintiffs and any goods or services other than
13 their genuine goods and services.

14 B. Directing Defendants to use their best efforts to recall from the trade,
15 including any and all distributors, wholesalers, dealers, retailers and all other third parties,
16 any and all infringing products bearing the Aether trademark and/or any and all products
17 bearing any other mark that is confusingly similar to the Aether Trademarks, along with all
18 marketing, advertising, promotional and sales materials used in connection with the Aether
19 products and/or in the performance of Defendants' business.

20 C. Directing Defendants to deliver to Plaintiffs for destruction all goods and
21 marketing, advertising materials and other promotional materials possessed, used or
22 distributed or available for sale by Defendants, or on their behalf, which refer to or relate
23 to the Aether trademark.

24 D. Directing Defendants to file with the Court and serve on counsel for
25 Plaintiffs, within thirty days after entry of any injunction issued by the Court in this action,
26 a sworn statement as provided in 15 U.S.C. §1116 setting forth in detail the manner and
27 form in which the Defendants have complied with the injunction.

28 E. Directing Defendants, jointly and severally, to account for all gains, profits

1 and advantages derived from the acts of infringement, false designation, passing off and
2 unfair competition and for their other violations of law.

3 F. Directing that Defendants, jointly and severally, be ordered to pay to
4 Plaintiffs all profits realized by Defendants by reason of the unlawful acts by Defendants
5 as set forth in this Complaint, pursuant to 15 U.S.C. §1117.

6 G. Directing that Defendants, jointly and severally, be ordered to pay to
7 Plaintiffs all damages suffered by Plaintiffs by reason of the unlawful acts by Defendants
8 as set forth in this Complaint, pursuant to 15 U.S.C. §1117.

9 H. Directing that Defendants, jointly and severally, be ordered to pay treble
10 damages to Plaintiffs on account of the defendants' willful, intentional and bad faith
11 conduct pursuant to 15 U.S.C. §1117.

12 I. Directing that Defendants, jointly and severally, be ordered to pay to
13 Plaintiffs statutory damages in an amount proven as may be proven at trial as a result of
14 Defendants' acts of counterfeiting.

15 J. Directing that Defendants, jointly and severally, be ordered to pay to
16 Plaintiffs compensatory damages in an amount as may be proven at trial as a result of
17 Defendants' violations of state law and the common law.

18 K. Directing that Defendants, jointly and severally, be ordered to pay to
19 Plaintiffs punitive and exemplary damages as provided by law.

20 L. Directing that Defendants, jointly and severally, be ordered to pay to
21 Plaintiffs its reasonable attorneys' fees, costs and disbursements incurred herein in view of
22 Defendants' intentional and willful infringement, pursuant to 15 U.S.C. §1117.

23 M. Directing that Defendants relinquish all rights in the Internet domain names
24 "www.aetherbeauty.co" and transfer the Internet domain names to Plaintiff, pursuant to 15
25 U.S.C. § 1125(d)(1)(C);

26 N. Awarding Plaintiffs pre-judgment and post-judgment interest to the
27 maximum extent provided by law.

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1 O. Awarding Plaintiffs such other and further relief as the Court may deem just
2 and proper.

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4 Dated: April 20, 2016

WEINTRAUB TOBIN CHEDIAK
COLEMAN GRODIN
Law Corporation

7 By: _____ /s/
8 Marvin Gelfand, State Bar No. 53586
9 Attorneys for Plaintiff, Aether, LLC

10 Plaintiff hereby demands a trial by jury.

11

12 Dated: April 20, 2016

WEINTRAUB TOBIN CHEDIAK
COLEMAN GRODIN
Law Corporation

15 By: _____ /s/
16 Marvin Gelfand, State Bar No. 53586
17 Attorneys for Plaintiff, Aether, LLC